

Minutes Tempe Police Public Safety Personnel Retirement System Board Special Meeting August 16, 2017

Minutes of the Tempe Police Safety Personnel Retirement System (PSPRS) Board special meeting, held on Wednesday, August 16, 2017, 12:15 p.m., Tempe City Hall, third floor conference room, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Steven Methvin
Rob Ferraro
James Foley
Bill Goodman
Alex Moreno

Board Members Absent:

None

City Staff Present:

Renie Broderick, Internal Services Director
Chris Hansen, Risk Manager
Wendy Messina, HR Program Coordinator
Susan Buck, Executive Assistant

Legal Counsel Present:

Cynthia Kelley

Chair Steven Methvin called the meeting to order at 12:20 p.m.

ITEM I – Consideration of Meeting Minutes:

Motion by Bill Goodman to approve the August 3, 2017 Police PSPRS Board Meeting Minutes and the August 3, 2017 Police PSPRS Board Executive Session Minutes; second by James Foley. Motion passed on a voice vote 5-0.

ITEM II – Public Appearances:

There were no public appearances.

ITEM III – Motion to Adjourn to Executive Session:

Motion by Alex Moreno to adjourn to Executive Session; second by Bill Goodman. Motion passed on a voice vote 5-0. The Board adjourned to Executive Session at 12:21 p.m. The Board meeting reconvened at 12:29 p.m.

ITEM IV – Examination of Process for Re-Hearing on Application for Accidental Disability Benefits (Matthew G. Murray):

Board Legal Counsel Cynthia stated that Chair Steven Methvin received emails from two Tempe Police members voicing concern about bias or conflicts of interest pertaining to Boardmember Rob Ferraro specific to the August 3, 2017 meeting agenda item for the rehearing on the application for accidental disability benefits of Matthew G. Murray.

Boardmember Ferraro stated his role in the investigation process for Matthew Murray, noting that he was the Tempe Officers Association (TOA) President and acted solely as a silent witness during the investigation. Boardmember Ferraro read Section 38-1104.A.1 of the Arizona Revised Statutes (A.R.S.) out loud to the Board, along with Article 5.A from the TOA Memorandum of Understanding (MOU), noting that these documents codified the right to a silent witness.

Boardmember Ferraro stated the he did not know Mr. Murray prior to the investigation, adding that he sat in on one interview and that he and Mr. Murray only had conversations regarding the police department investigation process. He further noted that in his role as TOA President, he acts as a silent witness for all TOA members and is currently involved in that regard for four other members. Boardmember Ferraro stated that the TOA attorney, Dale Norris, advised him to separate himself from the investigation once Mr. Norris began representing Mr. Murray. Mr. Ferraro stopped his involvement prior to Mr. Murray's resignation. Boardmember Ferraro provided an overview of TOA representation in various circumstances in which the TOA attorney or TOA Board would be involved, noting that Mr. Norris did not consult with him or the TOA Board regarding Mr. Murray. Boardmember Ferraro stated that previous members of this board were TOA presidents and voted on disability claims for members that they had represented as a silent witness; he noted that he has done nothing inconsistent with past practices of this Board. Boardmember Ferraro stated the he is not championing a cause, he did not attempt to bully or intimidate the Board and his comments were voiced publicly. He stated that he made the motion to send Mr. Murray to an IME because no other boardmember responded to the Chair's call for a motion - and two other members of the Board voted in agreement with the motion. Boardmember Ferraro stated that he would never put a cause before a law and denied acting unethically or that he violated his duty to report a substantial conflict of interest.

The Board discussed the term *silent witness* and the responsibilities of a silent witness. Boardmember Ferraro clarified that he separated from acting as a TOA point of contact for Mr. Murray previous to Mr. Murray's resignation from the City and that the investigation information that he was privy to is the same information that was presented to the Board.

Chair Methvin inquired about an interaction that Boardmember Ferraro had with staff regarding the Independent Medical Exam (IME) for Mr. Murray. Boardmember Ferraro stated that it was his understanding that as the police representative coordinating the scheduling of the IME, he should meet with the IME doctor, along with Board staff, in order to hand over the medical packet and clarify any questions the Board was submitting. HR Program Coordinator Wendy Messina stated that typically one of the elected board members schedules the IME; however, she sometimes assists with scheduling. Once the IME is scheduled, Ms. Messina makes a copy of the information submitted to the Board and provides it to the IME doctor; the board members are not typically involved in that part of the process. Ms. Messina noted that there may have been confusion on this IME because the Board wanted to submit additional questions for the IME doctor. Ms. Messina further stated that typically the medical information is provided to the doctor via courier and staff does not meet with the doctor before the IME. Boardmember Ferraro stated that he wanted to ensure that the doctor understood the IME questions and would answer them. The Board generally discussed how IME doctors are chosen, the timeframe for scheduling, the timeframe allowed the doctor to review the material and the difficulty in finding psychologists and psychiatrists to perform IMEs. Ms. Kelley cautioned that the Board cannot use a doctor for an IME if the City contracts with that doctor; Ms. Messina confirmed that staff does not use a doctor contracted by the City. Boardmember Ferraro provided an overview of his actions scheduling the IME for Mr. Murray. The Board further discussed the IME doctor selection process.

Boardmember Methvin called on a member of the public and former member of the Tempe Local Board, Kelly McMenemy, to provide additional information. Ms. McMenemy stated that when she scheduled IMEs as a board member, she used a pool of potential IME doctors and she would contact the doctor to ask whether they 1) were contracted by the City or 2) had ever treated the applicant. If the answer to both questions was no, the doctor was considered independent. Ms. McMenemy also noted that not all doctors will perform IMEs; it is reasonable that doctors would be re-used. Ms. Messina clarified that she researches doctors online and coordinates with the boardmembers scheduling the appointment. Ms. McMenemy stated that the doctor must do IMEs, be willing to testify and be truly independent – not affiliated with the City or the applicant.

Chair Methvin stated that the IME process can be discussed in more detail under the next agenda item and he directed the Board's attention back to the current agenda item, noting that the Board needs to determine whether there is enough information to reconsider the rehearing. Ms. Kelly stated that if the Board determines that there was something wrong with the rehearing process or vote at the August 3, 2017 meeting, the Board can vote to rehear the matter at the next Board meeting; if there was no error in process or vote, then the IME would proceed as previously approved.

Chair Methvin stated that any boardmember that voted “yes” for the IME at the previous meeting can vote to reopen the matter. Chair Methvin stated that he previously voted “no” on Mr. Murray’s rehearing request and noted that reasons why he did so. He also noted that the reason this came back before the Board was due to the two emails that he received concerning possible bias or conflict of interest; the meeting today was scheduled to allow the Board the opportunity to review the emails and to allow Boardmember Ferraro the opportunity to address the stated concerns.

Boardmember James Foley asked some clarifying questions regarding the IME process for psychological exams. Ms. Messina confirmed that current practice is to have an exam conducted by both a psychologist and a psychiatrist and that both of those doctors are selected independently.

Boardmember Alex Moreno stated that he was not at the previous meeting and voiced concerns regarding the medical information provided by Dr. White and the amount and type of overtime worked by Mr. Murray, which seemed to conflict with Mr. Murray’s statements regarding avoiding extra duty. Boardmember Moreno stated that he did not see any conflict of interest or bias in Boardmember Ferraro’s actions.

Boardmember Bill Goodman stated that he did not see any issue with Boardmember Ferraro’s actions. Boardmember Goodman noted that the timeline of Mr. Murray’s actions was key and that he appeared to be averaging over one shift a week of overtime.

Ms. Kelley stated that it appears as if the Board has determined there was not an issue with process at the rehearing, which means the Board is not moving forward to a re-vote. In that case, the Board has already voted on the rehearing so the concerns being stated about Mr. Murray’s application could possibly be put as questions to the IME doctor. Chair Methvin asked if someone who voted in favor of the motion could bring it back for consideration based on new information coming available. Ms. Kelley observed there is no new information; the only way there could be a revote is if the Board determined there was something wrong with the process. Ms. Broderick stated that staff received an updated overtime report yesterday that shows non-City overtime in addition to the overtime previously provided to the Board. Ms. Kelley noted that only the State Board and the applicant have the right to ask for a rehearing.

The Board discussed submitting supplemental questions to the IME doctor. Ms. Broderick requested that the Board email the questions to staff, who would then forward them to Ms. Kelley for legal review; the only questions received to date were from Boardmember Foley. Ms. Broderick stated that once Ms. Kelly reviews the questions, the complete list will be shared with the Board.

Kelly McMenemy addressed the Board stating that now that Boardmember Ferraro has explained his role as a silent witness, she would request that in future something like that be disclosed at the beginning of the discussion of an agenda item to eliminate any question of bias. Ms. McMenemy noted that Boardmember Ferraro’s comments in the publicly posted unapproved minutes from the August 3, 2017 meeting seem more testimonial than evidentiary, which was why she submitted an email to the Board stating concerns. Ms. McMenemy noted that the TOA President has historically been on the Board for years and this issue could arise in future; updating the Board’s procedures or guidelines to reflect immediate disclosure of any involvement will help meet the “headline test”. Ms. McMenemy noted that in no way was she implying that Boardmember Ferraro was doing anything wrong.

There was no further discussion and the Board took no action on this item.

ITEM V – Independent Medical Exam Process:

Ms. Broderick stated that staff consulted with the City Clerk’s Office, which previously provided staff support for the Tempe Local Boards. The City Clerk’s Office confirmed that it has been past practice for the elected members to coordinate the IME. The Local Board Procedures just generally address the convening of a medical board; there are no specific details regarding the IME process. Ms. Kelley stated that the IME is not typically handled by boardmembers, but is instead handled by Board staff. Ms. Kelley stated that boards will typically ask other boards or legal counsel for lists of IME doctors. Ms. Broderick stated that staff will be happy to handle that coordination if the Board wishes, noting that previous board members did not wish staff to handle the IME. Chair Methvin noted that having the elected members coordinate the IME puts them in an awkward position, particularly if they are also the union president. Ms. Kelley

concurrent, stating that if a member votes to send someone for an IME, then also schedules the IME, that can give a negative impression. Chair Methvin requested that staff work with Ms. Kelley to research methods used by other boards and develop an IME process for consideration by the Board. Boardmember Goodman noted that having staff schedule and coordinate the IMEs would allow for an additional layer of impartiality and align the Tempe Local Boards with the practices of other local boards. Ms. Broderick inquired if the Board wanted to look at changing the process not just in future, but for Mr. Murray's IME. Ms. Kelley stated that the Board can vote to change the process or assign staff in this specific case at this meeting if they wish.

Motion by Rob Ferraro to have staff handle all IMEs until a procedure is developed in future. Chair Methvin asked if there was any discussion on the motion.

The Board generally discussed the current IME process and the selection of doctors. Ms. Broderick stated that staff could survey other local boards regarding how they select IME doctors. Risk Manager Chris Hansen inquired about the level of involvement an IME doctor could have with the City. Ms. Kelley stated that the Board could not use a doctor that had a *contract* with the City or that was *regularly* used by the City. Mr. Hansen noted that it would be helpful to define what that meant.

Chair Methvin reminded the Board that there was a motion on the table; Boardmember Ferraro again made a motion to have staff, until further directed, schedule and coordinate all IMEs, including the one for Mr. Murray; second by Bill Goodman. Motion passed on a voice vote 5-0.

ITEM VI: Future Meeting Date:

The next meeting is September 7, 2017.

ITEM XI: Future Agenda Items:

Chair Methvin inquired if orientations were conducted with all boardmembers; Ms. Broderick indicated that they were. Chair Methvin requested that staff add discussion of bias/conflict of interest to the orientation. Ms. Kelley indicated that those things are usually covered in Robert's Rules of Order. Susan Buck, Executive Assistant, stated that staff provides information recommended by the City Clerk's Office regarding conflict of interest, but can add an item to the orientation agenda to discuss examples, including bias.

Adjournment

Motion to adjourn by Bill Goodman; second by James Foley. Motion passed on a voice vote 5-0. The meeting adjourned at 1: 23 p.m.



Renie Broderick
Local Board Secretary